IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

A.S.No.508 of 1994(A)

O.S.NO.85/1991 OF THE COURT OF THE SUBORDINATE JUDGE OF TIRUR.

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APPELLANT/1ST DEFENDANT:-

KARIKOLAKKADAN KUNHABDULLA'S SON MOIDEEN,
RESIDING AT ANANTHAVOOR AMSOM KAZHUTHAKARA DESOM IN TIRUR TALUK.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS/PLAINTIFF & DEFENDANTS 2 TO 4:-

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1. KARIKOLAKKADAN KUNHABDULLA'S SON ABU,

2. DO. MOIDEENKUTTY,

3. DO. HAMZA,

* 4. KARIKOLAKKADAN KUNHABDULLA'S WIFE PATHUMMAKUTTY UMMA, **(DIED)**

RESIDING AT ANANTHAVOOR AMSOM
KAZHUTHAKARA DESOM IN TIRUR TALUK.

* IT IS RECORDED THAT RESPONDENT NO.4 DIED AND RESPONDENTS 1 TO 3 ARE HER LEGAL HEIRS - VIDE ORDER DATED 13.12.2004 ON MEMO CF.20410/04 DATED 7.12.2004.

R1 BY ADV.SRI.K.K.MOHAMMED RAVUF.
R2 BY ADV.SRI.T.M.CHANDRAN.

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

A.S.No.508 of 1994-A

Dated, this the 2nd day of April, 2007

JUDGMENT

The 1st defendant in O.S.No.85 of 1991, which is a suit for partition, is the appellant. Plaintiff and defendants 1 to 3 are brothers. 4th defendant is their mother. The plaintiff filed a suit for partition claiming that the plaint-B schedule item No.1 was purchased in the name of plaintiff and defendants 1 to 3 and as such he is entitled to get ¼th share. Plaint-B schedule item No.2 belonged to their predecessor, which devolved upon all of them. The plaintiff and defendants 1 to 3 are entitled to get 7/32 share each and the 4th defendant 4/32 share in plaint-B schedule item No.2. The appellant-1st defendant raised a claim that item No.1 of plaint-B schedule exclusively belongs to him. It was contended that the said item of property was purchased using his own funds, though it stands in the name of plaintiff and other defendants. It was also contended that the building situated in that property was constructed by him using his own funds and he is entitled to get that building allotted to his share. The 2nd

respondent-2nd defendant raised a claim that the building situated in item No.2 of plaint-B schedule property exclusively belongs to him as it was constructed by him using his own funds. The trial Court found that plaintiff and defendants 1 to 3 are co-owners in respect of item No.1 of plaint-B schedule property and each of them are entitled to get ¼th share in that property. With regard to item No.2 of plaint-B schedule property, it was found that the plaintiff and defendants 1 to 3 are entitled to get 7/32 share each and the 4th defendant 4/32 share.

2. The trial Court found that the appellant failed to prove ouster. After discussing the evidence on record, the Court below found that there is no material to establish ouster pleaded by the appellant and hence the contention that the other co-owners lost their title by ouster and the appellant perfected his title by adverse possession was found against. It is a finding of fact based on good evidence. Regarding his claim for building also, trial Court found that he has not produced any documentary evidence to prove that he had constructed the building and made improvements in the property by spending his own funds. The appellant did not examine the persons who were engaged for the

construction of the building. The Court below held that the appellant failed to establish exclusive title which he claimed on item No.1, including the building, of plaint-B schedule property. It also held that the 2nd defendant failed to establish the exclusive title claimed by him over the building situated in item No.2 of plaint-B schedule property. 2nd defendant has not filed any appeal challenging that finding.

3. The learned counsel appearing for the appellant has strenuously argued before me that in this case the materials on record clearly establishes ouster.

4. I have carefully gone though the pleadings made in this case. I am afraid, the contention of ouster is not established. The appellant claims adverse possession based on Exhibit B4 series and Exhibit B3 series. Exhibit B3 series are tax receipts, which will show that the appellant was paying land tax from 1975 onwards. Exhibit B4 series also show that he was paying building tax. Exhibit B5 series show that as per the Building Tax Assessment Register the building stands in the name of appellant from the year 1977 upto the year 1992. As rightly held by the Court below, payment of land tax and building tax is not

sufficient to prove the ouster pleaded. So, the findings of the Court below that the plaintiff and defendants 1 to 3 are co-owners and the appellant is not entitled to get any equity and reservation in respect of the building situated in item No.1 of plaint-B schedule property are only to be upheld. The finding that the appellant failed to prove that he had made improvements also does not call for any interference. There is no merit in this appeal and the same is only to be dismissed.

In the result, the appeal is dismissed. C.M.P.No.3107 of 1994 also shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-